

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES EDWARD LUCKETT,
Plaintiff,
v.
ROBERT NEUSCHMID,
Defendant.

Case No. [18-cv-07670-JSC](#)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO
PROCEED IN FORMA
PAUPERIS; DENYING MOTION
FOR APPOINTMENT OF
COUNSEL**

Re: Dkt. Nos. 2, 3

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his sentence.¹ Because the petition states cognizable grounds for federal habeas relief, a response from Respondent is warranted.

BACKGROUND

In 2015, a jury in Alameda County Superior Court found Petitioner guilty of murder with the special circumstance of committing the murder during a robbery. The jury also found that Petitioner used a gun. The trial court sentenced him to a term of life in prison without the possibility of parole plus five years in state prison. On appeal, the California Court of Appeal affirmed, and the California Supreme Court denied review. Petitioner then filed the instant federal petition.

DISCUSSION

I. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in

¹ Petitioner has consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 5.)

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It
3 shall “award the writ or issue an order directing the respondent to show cause why the writ should
4 not be granted, unless it appears from the application that the applicant or person detained is not
5 entitled thereto.” *Id.* § 2243.

6 II. Legal Claims

7 Petitioner claims: (1) the prosecution presented false evidence; (2) the prosecution
8 withheld exculpatory evidence; (3) the trial court admitted unreliable D.N.A. evidence over the
9 defense motion to exclude it;² (4) the trial court excluded exculpatory evidence concerning
10 Petitioner’s brother; and (5) the police destroyed evidence after Petitioner requested that it be
11 tested for D.N.A. evidence. These claims, when liberally construed, present cognizable grounds
12 for federal habeas relief and warrant a response.

13 **CONCLUSION**

14 For the foregoing reasons and for good cause shown,

15 1. The Clerk shall serve a Magistrate Judge jurisdiction consent form, a copy of this
16 Order, and the petition, and all attachments thereto, on Respondent and Respondent’s attorney, the
17 Attorney General of the State of California. The Clerk also shall serve a copy of this Order on
18 Petitioner.

19 2. Respondent shall complete and file the Magistrate Judge jurisdiction consent form in
20 accordance with the deadline provided on the form.

21 3. Respondent shall also file with the Court and serve on Petitioner, within **ninety-one (91)**
22 **days** of the date this Order is issued, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
24 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state
25 trial record that have been transcribed previously and that are relevant to a determination of the
26 issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by
27

28 ² This claim is presented in two claims (numbered 3 and 4) in the petition. (ECF No. 1 at 7.)

1 filing a traverse (a reply) with the Court and serving it on Respondent within **twenty-eight (28)**
2 **days** of the date the answer is filed.

3 4. Respondent may, within **ninety-one (91) days** of the date this Order is issued, file a
4 motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory
5 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such
6 a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement
7 of non-opposition within **twenty-eight (28) days** of the date the motion is filed, and Respondent
8 shall file with the Court and serve on Petitioner a reply within **fourteen (14) days** of the date any
9 opposition is filed.

10 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
11 informed of any change of address by filing a separate paper captioned "Notice of Change of
12 Address." He must comply with the Court's orders in a timely fashion. Failure to do so may
13 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
14 Procedure 41(b).

15 6. Petitioner's application for leave to proceed in forma pauperis is GRANTED due to
16 Petitioner's lack of funds.

17 7. Petitioner's motion for appointment of counsel is DENIED. The Sixth Amendment's
18 right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722,
19 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint
20 counsel to represent a habeas petitioner whenever the court determines that the interests of justice
21 so require and such person is financially unable to obtain representation. Petitioner has presented
22 his petition adequately, and the interests of justice do not require appointment of counsel at this
23 stage of the case. If the circumstances of the case materially change, the Court will reconsider this
24 decision on its own accord; Petitioner need not and should not file further requests for
25 appointment of counsel.

26 **IT IS SO ORDERED.**

27 Dated: January 31, 2019

28 

JACQUELINE SCOTT CORLEY
United States Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES EDWARD LUCKETT,
Plaintiff,

v.

ROBERT NEUSCHMID,
Defendant.

Case No. [18-cv-07670-JSC](#)

CERTIFICATE OF SERVICE

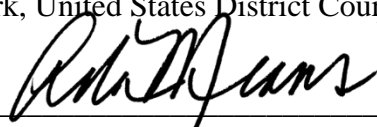
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 31, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Charles Edward Lockett ID: AX3774
California State Prison Solano C-16-115
P.O. Box 4000
Vacaville, CA 95696

Dated: January 31, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY